

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-472-C - ORDER NO. 95-1008 ✓

MAY 3, 1995

IN RE: Application of STS Networking Systems,)
Inc. d/b/a Scott Communications for a) ORDER
Certificate of Public Convenience and) GRANTING
Necessity to Provide Store and Forward) RECONSIDERATION
Telecommunications Services on a Local,) IN PART
IntraLATA, and InterLATA Basis Within)
South Carolina.)

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Petition for Rehearing or Reconsideration of STS Networking Systems, Inc. d/b/a Scott Communications ("Scott") requesting that the Commission rehear or reconsider Commission Order No. 95-834, issued on April 5, 1995, in the above-referenced Docket. For the reasons stated below, the Commission has determined that Scott's Petition for Rehearing or Reconsideration should be granted in part.

On February 28, 1995, the Commission issued Order No. 95-550 which approved, in part, the Application of Scott by granting Scott authority to use store and forward technology to provide intraLATA and interLATA 0+ collect and credit card telephone service. Order No. 95-550 denied Scott's request to provide local 0+ store and forward services. The Intervenor in this Docket, Southern Bell Telephone and Telegraph Company ("Southern Bell") and the South Carolina Telephone Coalition ("the SCTC"), filed separate Petitions for Rehearing and Reconsideration of Order No. 95-550. Scott did

not file a Petition to Rehear or Reconsider Order No. 95-550. On April 5, 1995, the Commission issued Order No. 95-834 which granted Southern Bell's and the SCTC's Petitions for Reconsideration of Order No. 95-550 and which denied Scott's Application to provide store and forward telecommunications services in South Carolina.

By its Petition for Rehearing or Reconsideration, Scott asserts error by the Commission in granting reconsideration of Order No. 95-550 without holding a further hearing. Scott argues that S.C. Code Ann. §58-9-1200 allows the Commission to change its previous order only after conducting another hearing. Scott's position appears to be that the Commission is not allowed to reconsider a matter without holding another hearing.

The Commission disagrees with Scott. Under the rules and regulations of the Commission as contained in 26 S.C. Regs. 103-881, the Commission is allowed the alternative of reconsidering an earlier decision without holding another hearing. While the Commission may, in the exercise of its discretion, grant a rehearing if the Commission decides further evidence would aid in reaching a decision, the Commission is not required to hold a new hearing when the new hearing would not add anything new to the factual record. In the instant matter, the Commission believes that the facts were sufficiently before the Commission and that a new hearing would provide no further relevant information. Therefore, the Commission may properly reconsider its decision based on facts in the record which may have allegedly been overlooked or misapplied in the original decision.

Scott next argues that since the Commission failed to grant a

rehearing within twenty (20) days of the filing of the Petitions for Rehearing or Reconsideration that the Petitions should be automatically denied pursuant to S.C. Code Ann. §58-9-1200. S.C. Code Ann. §58-9-1200 provides that "[t]he Commission shall either grant or refuse an application for a rehearing within twenty days and a failure by the Commission to act upon such application within that period shall be deemed a refusal thereof." Southern Bell's and the SCTC's Petitions for Rehearing or Reconsideration were timely filed with the Commission on March 16, 1995. Scott asserts that since the Commission failed to grant a rehearing by April 5, 1995, that the Petitions of Southern Bell and the SCTC are deemed refused. Scott's argument is based on its premise, as discussed above, that the Commission had no authority to issue its Order on Reconsideration.

The Commission disagrees with Scott's application of S.C. Code §58-9-1200. As discussed above, the Commission believes that it is certainly within the Commission's authority to issue an Order on Reconsideration. S.C. Code Ann. §58-9-1200 states that the Commission must "act upon" the petitions for rehearing within the twenty days as required. (See, Hamm v. South Carolina Public Service Commission, 303 S.C. 188, 414 S.E.2d 149 (1992) where the South Carolina Supreme Court held that "[u]nder the plain language of the statute, all that is required is that the PSC must 'act upon' a petition for rehearing within that time period." The Hamm decision involved a statute under the Electric Utilities Chapter of Title 58, but the language of that statute is identical to the language contained in S.C. Code Ann. §58-9-1200.) At its regularly

scheduled meeting on March 28, 1995, the Commission voted to grant the request for reconsideration but to defer the actual discussion until the next Commission meeting. At the next Commission meeting on April 4, 1995, the Commission reconsidered this matter and voted to deny Scott's Application to provide store and forward services. The vote on reconsideration implicitly denies the request for rehearing and renders the request for rehearing moot. The Commission then issued Order No. 95-550 on April 5, 1995. Clearly, the Commission "acted upon" the Petitions for Rehearing or Reconsideration as all of the Commission's actions on the Petitions occurred within the twenty day limitation imposed by S.C. Code Ann. §58-9-1200. Therefore, the Commission finds no merit in Scott's assertion.

Scott's next assertion is that the Commission erred in granting reconsideration because Order No. 95-834 contains no new matter not already considered. As noted above, the Commission may give a matter a second consideration, and the Commission may reexamine the matter in the record and may consider previously overlooked or misapprehended matter. In Order No. 95-834, the Commission noted that the "exclusion of the LEC from completing 0+ intraLATA calls from store and forward phones, even if the customer desired to use the LEC to complete his call, causes the Commission to reexamine its prior order, and conclude that this exclusion is a substantial problem for the consumers of South Carolina, which should not be allowed." (Order No. 95-834, p. 3.) Additionally, the Commission noted the precedential effect of Order No. 95-550 which "would have ramifications for customers and LECs far beyond

the impact of this isolated proceeding." (Order No. 95-834, p. 4.)
The Commission discerns no error in its reconsideration of Order No. 95-550.

Scott next asserts error by the Commission in denying Scott's application since other telephone utilities are currently providing 0+ and 0- services in several South Carolina service areas. Order No. 95-834 notes that "earlier Commission policy and precedent ... favors the provision of 0+ intraLATA traffic by the LECs." (Order 95-834, p. 3). Scott argues that "[t]he Commission has violated any such precedent by allowing both Southern Bell and Rock Hill Telephone Company to provide operator services outside of their own local service areas." (Petition, p. 7.)

The Commission disagrees and find no error with Order No. 95-834. The situations are clearly distinguishable. The instances cited by Scott involve situations where the LEC has chosen to provide certain services to its customers by contracting with other LECs for those services. The LEC provides the service for its customers, but chooses to provide the service by contracting with another LEC. The authority requested by Scott would completely preempt the services being provided by the LEC, and the LEC would have no chance to provide the service for the customer.

Scott next argues that the Commission erred in failing to grant Scott authority to provide local 0+ store and forward authority. In Order No. 95-550, the Commission stated that it "declines to authorize store and forward service for the completion of local calls." (Order no. 95-550, p. 8) The Commission noted in Order No. 95-550 that local calling using store and forward service

is authorized from confinement facilities, but the Commission declined to extend store and forward local service outside the confinement facilities. The Commission finds no error in its decision to deny the authority to provide local 0+ store and forward authority. Furthermore, Scott did not file a request for rehearing or reconsideration of Order No. 95-550 in which the Commission specifically denied Scott's request to provide store and forward service on a local basis. Since Scott did not request rehearing or reconsideration on the local calling issue, Scott is precluded from asking the Commission to reconsider a portion of Order No. 95-834 which does not reflect a change from Order 95-550.

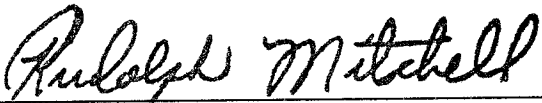
Scott's final assertion is that the Commission erred in failing to grant to Scott collect and credit card 0+ store and forward authority on an interLATA basis. The Commission agrees with Scott. The Commission believes that Scott should have the authority to provide collect and credit card 0+ store and forward service on an interLATA basis. The reasons for which the Commission granted reconsideration of Order No. 95-550 all dealt with intraLATA authority. The Commission therefore determines that Scott should be granted authority on an interLATA basis. Furthermore, by Order No. 95-17 in Docket No. 94-329-C, the Commission granted interLATA collect and credit card 0+ store and forward authority to Communicall, Inc. The Commission believes that the circumstances of the Communicall case which led to Communicall receiving authority to provide interLATA store and forward service are similar to this case. The Commission further

believes that the principles which applied to Communicall should be applied to Scott. Therefore, the Commission authorizes Scott to provide collect and credit card 0+ store and forward service on an interLATA basis only.

Based on the above-stated reasons, the Commission determines that the Petition for Rehearing or Reconsideration filed by Scott should be granted in part. Upon reconsideration, the Commission holds that Scott should be granted authority to provide collect and credit card store and forward service on an interLATA basis. The remainder of Scott's petition for Rehearing or Reconsideration is denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



CHAIRMAN

ATTEST:



Executive Director

(SEAL)